

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:20-CV-710-FDW-DSC**

HAYWARD INDUSTRIES, INC.,

Plaintiff,

v.

**BLUEWORKS CORPORATION,
BLUEWORKS INNOVATION
CORPORATION, NINGBO C.F.
ELECTRONIC TECH CO., LTD;
NINGBO YISHANG IMPORT AND
EXPORT CO., LTD.**

Defendants.

NOTICE UNDER RULE 7.1(B)

After Hayward filed its Motion for Attorneys' Fees, (Doc. No. 381), Defendants accused counsel for Hayward of misrepresenting Defendants' position on the Motion. Therefore, to ensure it has properly complied with LCvR 7.1(b) with all candor to the Court, Hayward attaches here (as Exhibit A) the entire email chain which discloses Defendants' position in their own words.

Defendants continue to oppose Hayward's Motion for Attorneys' Fees (and, indeed, have indicated they intend to move to strike it).

Respectfully submitted this the 31st day of March, 2024,

s/ Russ Ferguson

Russ Ferguson (N.C. Bar No. 39671)
Patrick G. Spaugh (N.C. Bar No. 49532)
Womble Bond Dickinson (US) LLP
301 South College Street, Suite 3500
Charlotte, NC 28202
Russ.Ferguson@wbd-us.com
Patrick.Spaugh@wbd-us.com

Erik Paul Belt (*admitted pro hac vice*)
ebelt@mccarter.com
James Donoian (*admitted pro hac vice*)
jdonoian@mccarter.com
Anne E. Shannon (*admitted pro hac vice*)
ashannon@mccarter.com
Alexander L. Ried (*admitted pro hac vice*)
aried@mccarter.com
McCarter & English, LLP
265 Franklin Street
Boston, MA 02110
T: (617) 449-6500
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Attorneys for Plaintiff Hayward Industries, Inc.

Exhibit A

From: Ferguson, Russ
To: Trimmer, Christina D.; Tolan, Siobhán; Long, Alex; "Michelle Dunn"
Cc: Belt, Erik Paul; Donoian, James; Shannon, Anne; Ried, Alexander; Rettig, Tami M.
Subject: RE: Hayward v. Blueworks
Date: Sunday, March 31, 2024 5:09:00 PM
Attachments: [image005.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)

Christy,

Happy Easter – and thank you for your email. It was certainly not our intention to “affirmatively misrepresent” Defendants’ position on our Motion. To be sure we have not done so, we will file a Notice with the Court attaching this email chain so the Court can see everything for itself.

To be clear, we do not believe we misrepresented anything. Instead, Defendants’ tactics with regard to this meet-and-confer appear to be part of a larger strategy to delay entry of the judgment. Not only is this consistent with Defendants’ practice of delay throughout this case, here specifically Defendants have already informed us that they intend to *move to strike* our Motion for Attorneys’ Fees. That makes clear that Defendants oppose our motion.

As to your position that our Motion for Attorneys’ Fees is not yet ripe – please point us to any case or rule that says so. We are not aware of any. Fed. R. Civ. P. 54(d)(2)(B)(i) is clear such motion is timely as long as it is filed “*no later than 14 days after the entry of the judgment.*” The rule does not say a party cannot move earlier.

Many thanks,
Russ

From: Trimmer, Christina D. <ctrimmer@shumaker.com>
Sent: Saturday, March 30, 2024 4:13 PM
To: Ferguson, Russ <Russ.Ferguson@wbd-us.com>; Tolan, Siobhán <stolan@mccarter.com>; Long, Alex <along@shumaker.com>; 'Michelle Dunn' <michelle.dunn@platinum-ip.com>
Cc: Belt, Erik Paul <ebelt@McCarter.com>; Donoian, James <jdonoian@McCarter.com>; Shannon, Anne <ashannon@mccarter.com>; Ried, Alexander <aried@mccarter.com>; Rettig, Tami M. <trettig@mccarter.com>
Subject: RE: Hayward v. Blueworks

External (ctrimmer@shumaker.com)

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Russ,

In your Motion for Attorneys’ Fees you affirmatively misrepresent our meet and confer on your motion. You emailed us asking our position (with no attempt to substantively meet and confer) at 4pm on Thursday, with Friday being a religious holiday and our office closed. I offered to discuss the motion on the very next business day (never refus[ing] to meet and confer). As I explained, attorney fee motions are not even ripe yet, so it was not necessary that you file your motion yesterday without waiting one additional business day to properly meet and confer. Nevertheless, after you insisted on filing your motion before the meet and confer that I offered, I provided our position highlighted in the email below. This response was sent 6.5 hours before you filed your motion, and yet your motion is devoid of our position and erroneously states that we refused to timely meet and confer.

I would request that you file a correction with the Court to withdraw the statement from your motion and correct it immediately with the following:

“Prior to filing our motion, counsel for Defendants responded with the following: Defendants’ position is that any motion for fees is not yet ripe, or is otherwise untimely. There is no judgment or order directing entry of judgment, and you do not specify below what your grounds are for your motion. In any event, the request does not specify how much Hayward is seeking, or even what percentage of its fees, such that we cannot properly consider your request. For at least these reasons, we oppose, and if Hayward proceeds with filing its Motion, we will need to meet and confer on Defendants’ motion to strike. We would not

oppose Hayward filing billing records under seal.”

If this is not done, we will notify the Court directly.

Christy

Christina Davidson Trimmer

Attorney at Law

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From: Trimmer, Christina D.

Sent: Friday, March 29, 2024 11:46 AM

To: Ferguson, Russ <Russ.Ferguson@wbd-us.com>; Tolan, Siobhán <stolan@mccarter.com>; Long, Alex <along@shumaker.com>; 'Michelle Dunn' <michelle.dunn@platinum-ip.com>

Cc: Belt, Erik Paul <ebelt@McCarter.com>; Donoian, James <jdonoian@McCarter.com>; Shannon, Anne <ashannon@mccarter.com>; Ried, Alexander <aried@mccarter.com>; Rettig, Tami M. <trettig@mccarter.com>

Subject: RE: Hayward v. Blueworks

Russ,

Defendants' position is that any motion for fees is not yet ripe, or is otherwise untimely. There is no judgment or order directing entry of judgment, and you do not specify below what your grounds are for your motion. In any event, the request does not specify how much Hayward is seeking, or even what percentage of its fees, such that we cannot properly consider your request. For at least these reasons, we oppose, and if Hayward proceeds with filing its Motion, we will need to meet and confer on Defendants' motion to strike. We would not oppose Hayward filing billing records under seal.

Thanks,

Christy

From: Ferguson, Russ <Russ.Ferguson@wbd-us.com>

Sent: Thursday, March 28, 2024 5:00 PM

To: Trimmer, Christina D. <ctrimmer@shumaker.com>; Tolan, Siobhán <stolan@mccarter.com>; Long, Alex <along@shumaker.com>; 'Michelle Dunn' <michelle.dunn@platinum-ip.com>

Cc: Belt, Erik Paul <ebelt@McCarter.com>; Donoian, James <jdonoian@McCarter.com>; Shannon, Anne <ashannon@mccarter.com>; Ried, Alexander <aried@mccarter.com>; Rettig, Tami M. <trettig@mccarter.com>

Subject: RE: Hayward v. Blueworks

CAUTION: External Email

Hey Christy,

We are happy to meet and confer next week, but we do not want to delay the filing of our motion. We will wait to file until tomorrow to allow you time to let us know your position.

We are still happy to meet and confer next week. If, at that time, your position changes, we will file a notice with the Court noting as much.

If we don't hear from you by tomorrow, we will notify the court that we assume you oppose. Like I said, if that changes next

week and you consent to our motion, we will file a notice to alert the Court.

Many thanks,
Russ

Russ Ferguson

Partner
Womble Bond Dickinson (US) LLP

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From: Trimmer, Christina D. <ctrimmer@shumaker.com>

Sent: Thursday, March 28, 2024 4:38 PM

To: Tolan, Siobhán <stolan@mccarter.com>; Long, Alex <along@shumaker.com>; 'Michelle Dunn' <michelle.dunn@platinum-ip.com>

Cc: Belt, Erik Paul <ebelt@McCarter.com>; Donoian, James <jdonoian@McCarter.com>; Ferguson, Russ <Russ.Ferguson@wbd-us.com>; Shannon, Anne <ashannon@mccarter.com>; Ried, Alexander <aried@mccarter.com>; Rettig, Tami M. <trettig@mccarter.com>

Subject: RE: Hayward v. Blueworks

Hi Siobhan:

We are happy to schedule a time next week to meet and confer on attorney fee motions. Defendants also plan to file motions for attorneys' fees under 15 U.S.C. § 1117, 17 U.S.C. § 505, and Rule 68 (offer of judgment), although the timing is premature. Given the significance of the issue, I don't think an email at 4pm the day you intend to file your motion is sufficient for LCvR 7.1, but let us know your availability for a call next week and we can coordinate.

Thanks,

Christy

Christina Davidson Trimmer

Attorney at Law

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101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280

Direct [704.945.2151](tel:704.945.2151) | Fax [704.332.1197](tel:704.332.1197)

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From: Tolan, Siobhán <stolan@mccarter.com>

Sent: Thursday, March 28, 2024 3:59 PM

To: Trimmer, Christina D. <ctrimmer@shumaker.com>; Long, Alex <along@shumaker.com>; 'Michelle Dunn' <michelle.dunn@platinum-ip.com>; 'Jennifer Seraphine' <seraphine@turnerboyd.com>; Keeley I. Vega <vega@turnerboyd.com>

Cc: Belt, Erik Paul <ebelt@McCarter.com>; Donoian, James <jdonoian@McCarter.com>; 'Ferguson, Russ' <Russ.Ferguson@wbd-us.com>; Shannon, Anne <ashannon@mccarter.com>; Ried, Alexander <aried@mccarter.com>; Rettig, Tami M. <trettig@mccarter.com>

Subject: Hayward v. Blueworks

CAUTION: External Email

Hello Christy:

Hayward will be filing a motion for its attorneys' fees. Please let us know defendants' position on Hayward's motion. We plan to file the motion later today or tomorrow morning.

Additionally, we will be moving to file the memorandum in support of the motion and associated declarations and exhibits under seal to redact hours and fees associated with the litigation, as well as other confidential information. Please let us know if you consent to filing the memorandum and associated declaration and exhibits under seal.

Thank you,
Siobhan



Siobhán M. Tolan | Associate

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